

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT R. MOODY,	§	
	§	No. 122, 2006
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	C.R. I.D. No. 0503005391
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 26, 2006

Decided: August 24, 2006

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 24<sup>th</sup> day of August 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Robert R. Moody (“Moody”) appeals from his Superior Court convictions of various drug offenses, as well as unlawful possession of ammunition and resisting arrest. Moody waived his right to a jury trial. The Superior Court found Moody guilty of all charges and sentenced him to 8 years at Level V, suspended for decreasing levels of probation to run concurrently. Moody claims that the Superior Court erred by denying his pretrial motion to suppress evidence, because the arresting police officers did not have reasonable suspicion or probable cause to conduct a warrantless arrest and search of his person. We

conclude that the Superior Court did not err in denying the motion to suppress, and affirm.

2. Before trial, Moody stipulated to the following facts set forth in Wilmington Police Officer Todd Riley's affidavit of probable cause:

On March 8, 2005 . . . [Officer Riley] was working a special overtime assignment which dealt with quality of life complaints (open air drug sales, open containers, loitering, etc). [Officer Riley] was wearing plain clothes with a Wilmington Police long sleeve t-shirt and was a passenger in a well known undercover police van.

[Officer Riley] and assisting officers . . . began conducting surveillance on the corner of 28<sup>th</sup> and Market St. . . . a high crime and drug area in which these officers have made several drug arrests. . . .

Moody was observed . . . for approximately 20-30 minutes loitering inside of the Kitchen Express located at 2801 N. Market St. It should be noted that at no time was Moody observed approaching the take-out window or making any purchases. Officers were also conducting surveillance on another subject [Anthony Watson]. [Officer Riley] then advised assisting officers to stop Watson. As assisting officers responded to the corner . . . in a fully marked police vehicle Moody exited the restaurant and began to walk westbound on W. 28<sup>th</sup> St. Moody then discarded a small unknown object and what appeared to be a small cigar which is commonly altered to smoke marijuana. Believing that Moody had just discarded illegal contraband, [Officer Riley] exited [the] police vehicle, identified [himself] as a police officer, and ordered Moody to get on the ground several times with negative results. [Officer Riley] then quickly approached Moody for fear that he was about to flee and took [him] into custody. . . . Officer Lenhardt immediately responded to the items Moody had discarded and retrieved one clear plastic zip lock bag containing a green plant-like substance which field tested positive for marijuana (approx 1 gram) and one altered in shape brown cigar paper containing a green plant-like substance which field tested positive for marijuana. It

should be noted that the ground was wet, however, the items retrieved were dry.<sup>1</sup>

3. When the police officers searched Moody incident to his arrest, they found 28 bags of crack cocaine, one bag of powder cocaine and four bullets on his person.

4. Moody moved to suppress all of the evidence recovered during that search, arguing that the police officers had had no reasonable articulable suspicion to detain him. The Superior Court denied Moody's motion to suppress, noting that the "State bears the burden of proving that the search and seizure comported with federal and state constitutional rights and state statutory law."<sup>2</sup> Acknowledging that Moody was seized when the officers ordered him to stop,<sup>3</sup> the trial court specifically found:

Before Moody failed to stop when summoned, the Officers had observed him loitering in a high crime area, repeatedly looking over his shoulder in a suspicious manner when the Officers were following him, and throw a blunt and clear plastic bag containing drugs. Based on the totality of the circumstances, viewed through the officer's trained eyes, this seemingly innocent behavior was suspicious. Although the Officers were not absolutely positive that the cigar was a blunt, reasonable suspicion only requires probability. The Officers knew that cigars were commonly used as blunts. The Court finds that

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<sup>1</sup> Riley Aff., Mar. 8, 2005.

<sup>2</sup> *State v. Moody*, Del. Super., No. 0503005391, Scott, J., at 4 (Aug. 26, 2005) (citing *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001)).

<sup>3</sup> *Id.* at 5 (citing *Flonnery v. State*, 805 A.2d 854, 857 (Del. 2001)).

the blunt, coupled with Moody's loitering in a high crime area gave rise to reasonable suspicion to stop.<sup>4</sup>

5. On appeal, Moody attempts to reframe his argument, claiming that the police officers lacked probable cause to justify his warrantless arrest and search. That attempt fails for several reasons. First, before the trial court, Moody claimed only that there was no reasonable articulable suspicion to justify his detention. We will not consider this argument because it was not fairly presented to the trial court.<sup>5</sup> Second, Moody ignores the facts of his case. The police ordered Moody to stop on the street. Moody's failure to obey the police command to stop constituted probable cause to detain him by force. While Moody was being detained because the police officer feared that he would flee, the field officer confirmed that the items discarded by Moody (in front of the officers) in fact contained marijuana. That gave the police grounds to make a warrantless arrest.<sup>6</sup>

6. Thus, the only issue before us concerns the very beginning of the detention: did the officers have a reasonable and articulable suspicion that Moody was engaged in criminal activity when Officer Riley ordered Moody to stop? "A trial court's determination [of] whether a peace officer possessed reasonable and

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<sup>4</sup> *Id.*

<sup>5</sup> SUP. CT. R. 8.

<sup>6</sup> 11 *Del. C.* § 1904(b)(1) (Law enforcement officers have the authority to make a warrantless arrest when the officer has reasonable ground to believe that a felony has been committed); *Jones v. State*, 745 A.2d 856, 862 (Del. 1999).

articulable suspicion to detain an individual is an issue of law and fact. Here, there are no disputed facts. Therefore, this Court reviews *de novo* the Superior Court's alleged errors in formulating and applying the law.”<sup>7</sup>

7. The Constitutions of the United States and of Delaware protect a defendant's right to be free from unreasonable searches and seizures.<sup>8</sup> In order to detain a suspect, the police must have, at a minimum, reasonable suspicion that criminal activity is afoot.<sup>9</sup> “A determination of reasonable suspicion must be evaluated in the context of the totality of the circumstances as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with an officer's subjective interpretation of those facts.”<sup>10</sup>

8. We conclude that the officers had reasonable and articulable suspicion to detain Moody at the time the officers ordered Moody to stop. Moody had been

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<sup>7</sup> *Jones*, 745 A.2d at 860.

<sup>8</sup> U.S. CONST. amend. IV; DEL. CONST. art. I § 6.

<sup>9</sup> *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

<sup>10</sup> *Jones*, 745 A.2d at 861.

standing, for 20 to 30 minutes, inside a restaurant known for being an open-air drug market. Moody was not observed ordering food or talking to restaurant employees. Rather, Moody was standing only one or two feet away from Anthony Watson, who the police observed making several hand-to-hand drug transactions. Watson and Moody left the restaurant at the same time, and once outside, Watson fled from the uniformed officers who were attempting to apprehend him. Moody walked in the other direction, but suspiciously and repeatedly looked back over his shoulder. Undercover police followed Moody in an unmarked van. From the van, police then observed Moody throw onto the ground, an unknown package and a “blunt”—a cigar known by police to be commonly hollowed out and filled with marijuana. The totality of those circumstances, including the officers’ experience and observations,<sup>11</sup> created probable cause for the officers to believe that Moody was acting as Watson’s associate, and that Moody had just discarded a controlled substance. Given those circumstances, Moody’s detention did not violate his constitutional rights.

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<sup>11</sup> See *Harris v. State*, 806 A.2d 119, 127 (Del. 2002).

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice